IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 130 of 2007()

(AGAINST THE ORDER OF THE DISTRICT JUDGE, ERNAKULAM IN MHOP.93/2006 DATED 24/03/2007)
.....

APPELLANT: PETITIONER:

PATHU IBRAHIM, D/O. PAREED,
PADAMOLATH HOUSE, (KAMBIVELIKKAL),
COLONY BUS STOP, KAKKANAD WEST P.O.,
KANAYANNUR TALUK.

BY ADV. SRI.K.RAVEENDRAN
SRI.ANIL KUMAR M.SIVARAMAN

RESPONDENTS: RESPONDENTS:
----

1. **SAUDA, AGED 29, D/O. IBRAHIM,**
   SISTER OF THE PERSON, PADAMOLATH HOUSE,
   KAMBIVELIKKAL, COLONY BUS STOP,
   KAKKANAD WEST P.O., KANAYANNUR TALUK.

2. **NAZEEMA, AGED 27 YEARS, D/O. IBRAHIM,**
   SISTER OF THE PERSON, PADAMOLATH HOUSE,
   KAMBIVELIKKAL, COLONY BUS STOP, KAKKANAD WEST P.O., KANAYANNUR TALUK.

BY

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.130 OF 2007

Dated 22nd August, 2007

JUDGMENT

Koshy,J.

Appellant is the mother and defacto guardian of the mentally ill daughter Zeenath who is aged 31. She filed a petition under the Mental Health Act for appointing her as the guardian and also for permission to deal with the share of immovable property of Zeenath for selling the same. It was also stated that sale proceeds will be used for purchasing another property in her name and not for alienating the same as the property in question is not useful to them. The District Court rejected the petition as when Zeenath was referred to the Medical Board, they issued a certificate that she is mentally retarded and has behavioral problems. The District Court stated that Mental Health Act is not applicable for appointing guardians of mentally retarded persons. The medical certificate shows that she has behavioral problems. It is also submitted by the appellant that her daughter is very violent, she is locked up in a room and she is under psychiatric treatment. Merely because there is retardation also, it cannot be stated that she is only mentally retarded. `Mentally ill person' is defined as a person who is in need of treatment by reason of any mental disorder other than mental

retardation. Here, other than mental retardation she needs medical treatment for mental illness. Considering the nature of illness, we are of the view that since she needed treatment for mental illness also other than mental retardation, her case can be considered by the District Court. Hence, we set aside the impugned order and remand the matter. The District Court shall consider the petition on merits. The case shall be posted on 24th September, 2007.

The appeal is allowed by way of remand.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

tks